

ATTACHMENT C

OUTSOURCING CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ("Agreement") made this ____th day of ____, 200__ between SAP Public Services, Inc. having its principal place of business at The Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW, Suite 1300 / North Tower / Gray, Washington, DC 20004 (hereinafter referred to as "SAP"), _____, having its principal place of business at _____ (hereinafter referred to as "Vendor") and _____, having its principal place of business at _____, (hereinafter referred to as "Ordering Agency").

All terms as set forth in the SAPs GSA Schedule Contract No. GS-35F-5891H ("GSA Contract") and in Blanket Purchase Agreement No. N00104-02-A-ZE77 ("BPA") and referred to herein, shall have the same meaning as set forth in the GSA Contract and BPA unless otherwise modified herein.

WHEREAS, SAP is in the business of providing proprietary software, documentation, and related services to its customers;

WHEREAS, Pursuant to the BPA order, between SAP and Ordering Agency, SAP has licensed its Software, Documentation and other Proprietary Information to Ordering Agency for Use in its business operations;

WHEREAS, Ordering Agency has engaged Vendor to perform certain facilities and/or information systems management services as set forth in the _____ Agreement between Vendor and Ordering Agency dated _____ ("Services") that will require Vendor to have access to the Software; and

WHEREAS, SAP and/or Ordering Agency will disclose to Vendor the Software, whether in source or object code, including unique concepts or techniques embodied therein, Documentation, any Third-Party Database or Third-Party Software sublicensed from SAP, and any other Proprietary Information for the sole purpose of allowing Vendor to provide the Services to Ordering Agency;

NOW THEREFORE, in consideration of disclosure to Vendor of such Proprietary Information, and intending to be legally bound, the parties agree as follows:

1. **Permissible Users.**

Vendor agrees that it will use the Proprietary Information solely for providing the Services to Ordering Agency. Vendor will not use the Proprietary Information to process its own business information or to provide processing or facilities management or other services to any party other than Ordering Agency.

2. **SAP Proprietary Information.**

- (a) Vendor acknowledges SAP's assertion that ownership of and title in and to all intellectual property rights, including patent, trademark, service mark, copyright, and trade secret rights, in the Proprietary Information are and shall remain in SAP and its parent companies (SAP America, Inc. and SAP AG) and their respective licensors. Vendor acquires only the right to use the Proprietary Information under the terms and conditions of this Agreement and does not acquire any ownership rights or title in or to the Proprietary Information and that of their respective licensors.
- (b) SAP agrees that no restrictions are made upon Vendor with respect to any Proprietary Information that: (a) is already rightfully possessed by Vendor without obligation of confidentiality; or (b) is developed independently by Vendor without breach of this Agreement; or (c) is rightfully received by Vendor from a third party without obligation of Confidentiality; or (d) is, or becomes, publicly available without breach of this Agreement.
- (c) Vendor shall not remove any proprietary, copyright, trademark, or service mark legend from the Software, Documentation or other provided Proprietary Information.
- (d) Vendor shall maintain a log of the number and location of all originals and copies of the Software. The inclusion of a copyright notice on any portion of the Software or Documentation shall not cause or be construed to cause it to be a published work.

3. **Protection of Proprietary Information.**

- (a) Vendor agrees that it will not disclose, provide, or make available any of the Proprietary Information in any form to any person, except to bona fide employees, officers, or directors whose access is necessary to enable Vendor to exercise its rights hereunder, without the SAP's prior written consent.

- (b) Vendor shall not copy, translate, disassemble, or decompile, nor create or attempt to create the source code from the object code of the Software licensed hereunder or use it to create a derivative work, unless authorized in writing by SAP.
- (c) Vendor acknowledges that any disclosure to third parties of Proprietary Information may cause immediate and irreparable harm to SAP, therefore, Vendor agrees to take the same protective precautions to protect the Proprietary Information from disclosure to third parties as it takes with its own proprietary and Proprietary information of a similar nature.

4. Duties Upon Termination.

Upon any termination of the License Agreement or contract between the Ordering Agency and Vendor for the Services hereunder, Vendor shall immediately cease Use of the Proprietary Information, and shall immediately comply with the disposition instructions provided by the Ordering Agency, which shall provide for the removal, return, destruction or erasure of the SAP Proprietary Information from any computer hardware or storage media, and shall require Vendor's certification to SAP, in writing, that it has complied as instructed.

5. No Rights Transferred.

The furnishing of the Proprietary Information for the limited purposes set forth herein does not constitute the grant, option, license, sublicense, assignment, or other form of transfer to Vendor of any rights, title or interest in or to such Proprietary Information.

6. Modifications and Extensions.

Vendor, under the terms of this Agreement, expressly warrants and represents on its behalf, and on behalf of its agents and employees, that no Modifications or Extensions for the licensed Software will be performed without providing prior written notice to SAP. All Modifications and Extensions to the Software owned by SAP shall be considered part of the Software for purposes of this Agreement.

7. Indemnification.

- (a) Vendor agrees to indemnify and defend SAP, its parent, affiliates, its and their officers, directors and employees, from and against any and all loss, claim or damage, including attorney's fees and costs, which SAP may suffer, that arise from or are in any way connected with Vendor's provision of the Services to Ordering Agency or breach of Vendor's obligations hereunder.
- (b) ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, UNDER NO CIRCUMSTANCES SHALL SAP BE LIABLE TO VENDOR, ORDERING AGENCY OR ANY OTHER PERSON OR ENTITY FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSS, OR EXEMPLARY OR PUNITIVE DAMAGES. The foregoing limitations of liability does not apply to personal injury or death caused by the gross negligence or willful misconduct of SAP.

8. Assignment.

Vendor may not, without SAP's prior written consent, assign, delegate, sublicense, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement. Any permitted assignment of this Agreement shall provide that the provisions of this Agreement shall continue in full force and effect and that Vendor shall guaranty the performance of its assignee and shall remain liable for all obligations hereunder.

9. Miscellaneous.

- (a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.
- (b) The provisions of this Agreement, together with any agreements incorporated or referred to herein, shall (i) with regard to the subject matter hereof, supersede all prior agreements and negotiations, and (ii) be modified only by a written agreement.
- (c) In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect.
- (d) This Agreement shall be governed by and construed under United States Contract law without reference to its conflicts of law principles.

This Agreement shall be in effect beginning on the date first above written and shall continue in effect until otherwise agreed upon by the parties in writing.

IN WITNESS HEREOF, and intending to be legally bound, the parties have executed this Agreement on the date and year first written above.

SAP PUBLIC SERVICES, INC.

_____(Vendor)

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

_____(Ordering Agency)

By: _____

Title: _____

Date: _____